

under subpart E of this part. The Administrator will also record the NO<sub>x</sub> allowances allocated under § 96.88(a)(1) for each NO<sub>x</sub> Budget opt-in source in its compliance account.

(b) Each year, after the Administrator has made all deductions from a NO<sub>x</sub> Budget unit's compliance account and the overdraft account pursuant to § 96.54, the Administrator will record NO<sub>x</sub> allowances, as allocated to the unit under subpart E of this part or under § 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NO<sub>x</sub> allowances, as allocated under subpart E of this part, in the allocation set-aside for the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) *Serial numbers for allocated NO<sub>x</sub> allowances.* When allocating NO<sub>x</sub> allowances to and recording them in an account, the Administrator will assign each NO<sub>x</sub> allowance a unique identification number that will include digits identifying the year for which the NO<sub>x</sub> allowance is allocated.

#### § 96.54 Compliance.

(a) *NO<sub>x</sub> allowance transfer deadline.* The NO<sub>x</sub> allowances are available to be deducted for compliance with a unit's NO<sub>x</sub> Budget emissions limitation for a control period in a given year only if the NO<sub>x</sub> allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO<sub>x</sub> allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO<sub>x</sub> allowance transfer correctly submitted for recordation under § 96.60 by the NO<sub>x</sub> allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 96.61, of NO<sub>x</sub> allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is

located by the NO<sub>x</sub> allowance transfer deadline for a control period, the Administrator will deduct NO<sub>x</sub> allowances available under paragraph (a) of this section to cover the unit's NO<sub>x</sub> emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under § 96.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO<sub>x</sub> allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO<sub>x</sub> Allowance Tracking System account number and end with the unit having the compliance account with the highest NO<sub>x</sub> Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NO<sub>x</sub> allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO<sub>x</sub> allowances deducted for the control period equals the number of tons of NO<sub>x</sub> emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NO<sub>x</sub> allowances required for deduction to account for actual utilization under § 96.42(e) for the control period; or

(ii) Until no more NO<sub>x</sub> allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO<sub>x</sub> allowances by serial number.* The NO<sub>x</sub> authorized account representative for each compliance account may identify by serial number the NO<sub>x</sub> allowances to be deducted from the unit's compliance account under paragraph (b), (d), or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) *First-in, first-out.* The Administrator will deduct NO<sub>x</sub> allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO<sub>x</sub> allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO<sub>x</sub> allowances that were allocated for the control period to the unit under subpart E or I of this part;

(ii) Those NO<sub>x</sub> allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;

(iii) Those NO<sub>x</sub> allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and

(iv) Those NO<sub>x</sub> allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO<sub>x</sub> allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO<sub>x</sub> allowances, the Administrator will deduct the required number of NO<sub>x</sub> allowances, regardless of the control period for which they were allocated, whenever NO<sub>x</sub> allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO<sub>x</sub> Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following

guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO<sub>x</sub> Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:

(1) The NO<sub>x</sub> authorized account representative of the units may identify the percentage of NO<sub>x</sub> allowances to be deducted from each such unit's compliance account to cover the unit's share of NO<sub>x</sub> emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 96.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO<sub>x</sub> allowances for each such unit until the number of NO<sub>x</sub> allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NO<sub>x</sub> emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under § 96.42(e) for the control period.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

#### § 96.55 Banking.

(a) NO<sub>x</sub> allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows: